

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of _____)
Implementation of Section 621(a)(1) of _____)
the Cable Communications Policy Act of 1984 _____) MB Docket No. 05-
311
as amended by the Cable Television Consumer _____)
Protection and Competition Act of 1992 _____)

COMMENTS OF WAYLAND, MASSACHUSETTS

These Comments are filed by Wayland, Massachusetts in support of the comments filed by the National Association of Telecommunications Officers and Advisors ("NATOA"). Like NATOA, Wayland believes that local governments can issue an appropriate local franchise for new entrants into the video services field on a timely basis, just as they have for established cable services providers. In support of this belief, we wish to inform the Commission about the facts of video franchising in our community.

Cable Franchising in Our Community

Community Information

Wayland is a town with a population of 4000 households. Our franchised cable provider is Comcast. Our community has negotiated cable franchises since 1984. One of our original local programs, "Sports Update", produced by our high school students, has broadcast continuously since that time.

Our Current Franchise

Our current franchise began on September 17, 2000 and expires on September 17, 2010. Under the statutory timeline laid out in the Federal Cable Act, the cable operator has a 6-month window beginning 36 months before the expiration of the franchise in which to request a renewal under the Federal Act. As a result, at this time we are not currently negotiating a franchise renewal with the incumbent provider.

Our franchise agreement requires the cable operator to pay a franchise fee to the Town of Wayland in the amount of approximately \$60,000 annually, plus a

capital grant of \$165,000. This is roughly 2% of the cable operator's revenues. The revenues for franchise fee purposes are calculated based on the gross revenues of the operator, in accordance with the Federal Cable Act.

We require the cable operator to provide the following capacity for public, educational, and/or governmental ("PEG") access channels on the cable system. We currently have 1 channels devoted to public access, educational access and government access. Our agreement allows us to add another channel in the future.

Our franchise requires that our PEG channels be supported in the following ways by the cable operator:

As part of the franchise agreement, the Board of Selectmen designated a non-profit Access Corporation to assume responsibility for "the provision of public, educational, and governmental ("PEG") programming, facilities and equipment." In other words, Comcast (formerly AT&T Broadband) turned the public access station over to a local Wayland corporation that assumed those responsibilities on behalf of the Town of Wayland; the Town, however, providing the studio space. Comcast pays the Town an annual amount of approximately \$60,000 for the operation of the station, plus specific monies (\$20,000) for the schools and \$165,000 for capital needs.

The name of this new corporation is the Wayland Community Access and Media Corporation, or WayCAM. The original Board of Directors consisted of three persons appointed by the Board of Selectmen, one by the Superintendent of Schools, and one by the Cable Advisory Committee.

Our franchise contains the following institutional network ("I-Net") requirements: The franchisee maintains the I-Net which connects all town schools and municipal buildings. Licensee shall be responsible for the technical maintenance and signal quality of such downstream and upstream local channel transmissions and volume levels notwithstanding the fact that Licensee is not responsible for the production quality of public or educational access productions nor is Licensee responsible for the access equipment not owned by Licensee. Signal transmission quality on such channels shall be commensurate with those which apply to Licensee's regular commercial channels and Licensee shall upon request provide copies of F.C.C. signal quality proofs of performance with respect to the local origination and access channels. Licensee shall ensure that the channel is operational at all times, or if the channel is not operational, that a staff person be on call for prompt remedy of the outage.

We use our I-Net facilities in the following ways: Live broadcast of weekly Selectmen's meetings, live annual broadcast of Town Meeting from multiple town locations, live origination of local sports event coverage, and as a telecommunications backbone for police/fire operations.

Our franchise contains the following requirements regarding emergency alerts: The Licensee shall provide an emergency audio override alert system which system shall be in accordance with applicable FCC and FEMA emergency alert rules. Licensee shall upon request provide the Issuing Authority with information as reasonably needed concerning Issuing Authority use of Massachusetts Emergency Management Agency (MEMA) resources and facilities for emergency communications. These emergency alert requirements provide an important avenue of communication with our residents in the event of an emergency

Our franchise contains the following customer service obligations, by which we are able to help ensure that the cable operator is treating our residents in accordance with federal standards and the terms it agreed to in its franchise.

“ARTICLE 6 SUBSCRIBER RIGHTS AND CONSUMER PROTECTION

Section 6.1 - CUSTOMER SERVICE

The Licensee shall maintain a publicly listed, toll free, customer service number for the general purpose of servicing customer needs including receiving and resolving complaints, including without limitation, those regarding service, equipment malfunctions or billing and collection disputes. The Licensee further agrees to continue at a convenient location within Needham, or within a distance from the Wayland town line not greater than the distance to Needham, a customer service and business office managed by the Licensee, which shall serve customer needs, including at a minimum bill payment, exchange of equipment and processing complaints. In the event Licensee maintains a customer office in Natick or in a Town closer than Needham,, Wayland residents shall have use of same. Said office shall be open for walk-in business during normal business hours, including at least one (1) weeknight or weekend morning.

Section 6.2 - TELEPHONE ACCESS

(a) Licensee shall have available trained customer service personnel to receive and log service calls and complaints from 9:00 AM to 5:00 PM Monday through Friday. Licensee shall comply with the FCC standards regarding response to customer phone calls which standards are attached and made a part hereof.

(b) Licensee shall provide and maintain a toll-free 24-hour answering line which Subscribers may call without incurring added message units or toll charges so that prompt maintenance and service is available. At the time of initial subscription the Licensee shall give each new subscribing household a notice of billing practices and dispute procedures, which notice shall include the Licensee's telephone number.

Section 6.3 - INSTALLATIONS, OUTAGES AND SERVICE CALLS

Licensee agrees to be bound by the customer services obligations adopted by the FCC in 47 Code of Federal Regulations 76.309(c), as they may hereafter be amended, a copy of which is attached as Schedule 6.3.

Section 6.4 - INSTALLATION

(a) Licensee shall make a good faith effort to respond to all requests for aerial installation within seven (7) days of such request, or at such other time as is mutually agreed upon by Licensee and said subscriber. Underground installation shall be completed as expeditiously as is practicable. If arranging appointments for installation, Licensee shall specify in advance whether such will occur in the morning or afternoon, or a narrow interval, if possible, and will make reasonable efforts to install at times convenient to subscribers (including times other than 9:00 AM to 5:00 PM weekdays).

(b) Licensee shall be responsible for picking up and changing converters at subscriber's request at no additional charge where such converter changeout is initiated by Licensee to provide additional channels that have become available as a result of Licensee's expansion of channel capacity. In order to improve service, Licensee reserves the right to offer subscribers the option of bringing converters in to a Licensee office for drop-off or exchange themselves.

Section 6.5 - MINIMUM SUBSCRIBER INFORMATION

Licensee will provide all prospective subscribers with complete, clear and concise written information before consummation of any agreement for initial installation of cable service. Such sales materials shall clearly disclose the price and other information concerning Licensee's lowest cost basic service. Such information shall include but not be limited to the following:

(a) All service and rates, deposits if applicable, installation costs, additional television set charges, service upgrade or downgrade charges, and relocation of cable outlet charges.

(b) Written information concerning billing and termination procedures, procedures for ordering changes in or termination of services, and all refund policies, including the availability of rebates or credits for loss of service.

(c) Written information concerning the utilization of video cassette recorders (VCRs) with cable services(s), including the cost for hooking up VCRs so that they function as manufactured, and any other associated VCR costs or charges.

(d) Written information concerning the availability of special equipment such as VCR kits, A/B switches, and lockboxes and all other equipment notifications contained in 207 CMR 10.00 et. seq.

(e) Written information concerning privacy policies, pursuant to state and federal law.

(f) Written information concerning steps to take in the event of loss of service.

Section 6.6 - PARENTAL CONTROL

(a) Upon request, and at no separate, additional charge, the Licensee shall provide subscribers with the capability to control the reception of any channel on the Cable Communications System.

(b) The Issuing Authority acknowledges that the parental control capability may be part of a converter box and the Licensee may charge subscriber for use of said box.

Section 6.7 - BILLING AND TERMINATION PROCEDURES

Licensee will comply with the regulations of the Commission, 207 CMR 10.00 et. seq., as those regulations may be amended from time to time, and will inform all prospective subscribers of complete information about rates and charges for different levels of services and service calls, billing and collection procedures, procedures for ordering changes in or termination of services, and refund policies, before consummation of any agreement for installation of service. (See Schedule 6.7 attached hereto.)

Section 6.8 - VOLUNTARY DISCONNECTION OF SERVICE

Subscribers who request full disconnection of cable service shall not be responsible for further charges for such service upon actual termination of service or after seven (7) days notice to Licensee, whichever occurs first. Licensee shall make a good faith effort to disconnect service as soon as possible after requested to do so by a subscriber. A subscriber who requests full disconnection of cable service shall make a good faith effort to return all of his or her customer premises equipment to Licensee's local business location or any other reasonable location Licensee may designate.

Section 6.9 - BILLING DISPUTES

In the event of a bona fide billing dispute, Licensee will resolve each dispute within fifteen (15) working days of receiving notification from the subscriber. The subscriber shall be responsible for paying only that portion of the bill that is not in dispute. In no event shall Licensee disconnect or assess a late payment charge from the subscriber for failure to pay bona fide disputed bills, or portions thereof, upon notice of said dispute.

Section 6.10 - PROTECTION OF SUBSCRIBER PRIVACY

(a) Licensee shall respect the rights of privacy of every subscriber and/or user of the Cable Communications System and shall not violate such rights through the use of any device or signal associated with the Cable System, and as hereafter provided.

(b) Licensee shall comply with all privacy provisions contained in this Section and all other applicable federal and state laws including, but not limited to,

the provisions of Section 631 of the Cable Communications Policy Act of 1984 and Title 18 United States Code Section 2520.

(c) Licensee shall be responsible for carrying out and enforcing the Cable System's privacy policy, and shall at all times maintain adequate physical, technical and administrative security safeguards to ensure that personal subscriber information is handled and protected strictly in accordance with this policy.

(d) Licensee shall notify all third parties who offer cable services in conjunction with Licensee, or independently over the Cable System, of the subscriber privacy requirements contained in this Renewal License.

Section 6.11 - PRIVACY WRITTEN NOTICE

Prior to the commencement of cable service to a new subscriber, and annually thereafter to all Cable System subscribers, Licensee shall provide a comprehensive and easily understandable written document explaining Licensee's practices regarding the collection, retention, uses, and dissemination of personal subscriber information, and describing Licensee's policy for the protection of subscriber privacy.

Section 6.12 - DISTRIBUTION OF SUBSCRIBER INFORMATION

Licensee and its agents or employees shall not, without permission from the subscriber, disclose to any third party a subscriber's name or address. Said opportunity to prevent disclosure shall be provided to each subscriber annually through a written notice. A subscriber shall have the right, at any time, to request Licensee not to disclose to any third party data identifying the subscriber either by name or address and Licensee shall abide by this request. Any such disclosure shall be in accordance with 47 U.S.C. 631.

Section 6.13 - POLLING BY CABLE

No poll or other upstream response of a subscriber or user shall be conducted or obtained unless the program of which the upstream response is a part shall contain an explicit disclosure of the nature, purpose and prospective use of the results of the poll or upstream response, unless the program has an informational, educational function which is self evident. Licensee or its agents shall release the results of upstream response only in the aggregate and without individual references.

Section 6.14 - INFORMATION WITH RESPECT TO VIEWING HABITS AND SUBSCRIPTION DECISIONS

Licensee or its agents or its employees shall not make available to any third party, including the Town, information concerning the viewing habits, internet usage or subscription package decisions of any individual subscriber except as required by law.

Section 6.15 - SUBSCRIBER'S RIGHT TO INSPECT AND VERIFY INFORMATION

(a) Licensee shall make available for inspection by a subscriber at a reasonable time and place all personal subscriber information that Licensee maintains regarding said subscriber.

(b) A subscriber may obtain from Licensee a copy of any or all of the personal subscriber information regarding him or her maintained by Licensee. Licensee may require a reasonable fee for making said copy.

(c) A subscriber or user may challenge the accuracy, completeness, retention, use or dissemination of any item of personal subscriber information. Such challenges and related inquiries about the handling of subscriber information, shall be directed to Licensee's General Manager.

Section 6.16 - MONITORING

Neither Licensee or its agents nor the Town or its agents shall tap or monitor, arrange for the tapping or monitoring, or permit any other person to tap or monitor, any cable, line, signal, input device, or subscriber outlet or receiver for any purpose, without the prior written authorization of the affected subscriber or commercial user; provided, however, that Licensee may conduct system wide or individually addressed "sweeps" solely for the purpose of verifying system integrity, checking for illegal taps, controlling return-path transmission, or billing for pay cable services or pay-per-view. Licensee shall report to the affected parties and all appropriate authorities any instances of monitoring or tapping of the Cable Communications System, or any part thereof, of which it has knowledge, whether or not such activity has been authorized by Licensee. Licensee shall not record or retain any information transmitted between a subscriber or commercial use and any third party, except as required for lawful business purposes Licensee shall destroy all subscriber information of a personal nature after a reasonable period (not to exceed two months) of time except as authorized not to do so by the affected subscriber.

Section 6.17 - EMPLOYEE IDENTIFICATION CARDS

All of Licensee's employees, including repair and sales personnel, entering private property must have visible employee photo-identification card.

Section 6.18 - TECHNICAL AND CUSTOMER SERVICE STAFF LEVELS

Licensee will employ enough service technicians and customer service representatives to meet its obligations under this License.

Section 6.19 - NON-DISCRIMINATION

Licensee shall not discriminate against any person in its solicitation, service or access activities, if applicable, on the basis of race, color, creed, religion, ancestry, national origin, geographical location within the Town, sex, affectional preference, disability, age, marital status, or status with regard to public assistance. Licensee shall be subject to all other requirements of federal and state regulations concerning non-discrimination.

Section 6.20 - MUNICIPAL ACCESS TO LICENSEE'S SURVEY MATERIALS

In the event the Licensee surveys the Wayland subscriber population to test for response to particular programming preferences, or for other reasons, it shall, upon request of the Issuing Authority share the results of its programming surveys so long as the Licensee does not consider the questions and/or the results proprietary.”

Our franchise contains the following reasonable build schedule for the cable operator;

“Section 5.3 – FIBER LINK FROM STUDIO TO NEEDHAM

The Licensee shall replace and have operational the current link from the Wayland studio to the Needham headend with a fiber optic dedicated link and shall not pass-through or raise rates based on the costs thereof. Said fiber shall be installed and operating in good condition no later than July 31, 2001.”

At this writing all facilities were complete.

Our franchise requires that the cable operator currently provide service to the following areas of our community:

‘Section 3.1 - AREA TO BE SERVED [SEE G.L.c. 166A §3(a)]

(a) The area to be served shall continue to be the entire Town of Wayland. Service shall continue to be provided to every dwelling occupied by a person requesting Cable Service, provided that the Licensee is able to obtain from property owners any necessary easements and/or permits in accordance with Section 621(a)(2) of the Federal Cable Communications Act of 1984.

(b) Provided Licensee has at least ninety(90) days prior notice concerning the opening of residential subdivision trenching, or of the installation of conduit for the location of utilities, it shall install its cable in such trenching or conduits or may seek permission to utilize alternative trenching or conduits within a comparable time frame, subject to said subdivision being 250 feet from existing cable plant. If a substantial quantity of cable is required for a large subdivision and said quantity is not in stock, the Licensee shall be allowed additional time for said installation. The Issuing Authority, or its designee, shall exercise reasonable efforts to have the Planning Board and developers give timely notice of trenching and underground construction to the Licensee.”

In order to ensure that our residents have access to current telecommunications technologies, our franchise contains the following rebuild or upgrade requirements:

“Section 3.2 - SUBSCRIBER NETWORK

(a) The Licensee shall continue to make available to all residents of the Town a minimum seven hundred fifty Megahertz (750 MHz) Cable Communications

System, fed by means of a fiber-optic transportation cable network, fully capable of carrying at least one hundred (100) NTSC video channels in the downstream direction and four (4) NTSC video channels in the upstream direction. Said 750 MHz Cable System shall be designed for not less than 550 MHz, or its equivalent, of video transmissions, with 200 MHz reserved for future digital or analog two-way transmissions, with the allocation of the analog and digital bandwidth within the 750 MHz may be subject to change at the discretion of the Licensee. The Cable System shall continue to utilize a hybrid fiber-coaxial cable architecture with fiber running to nodes within the Town, or superior Cable System technology.

(b) Pursuant to the terms of the Social Contract between Licensee and the FCC, the Licensee agrees not to file a cost of service filing to recoup the costs of the already completed rebuild or treat the cost of this rebuild as an external cost pass through or basis for rate adjustment.

(c) The Licensee shall not remove any television antenna of any subscriber but shall offer a device to allow subscribers to choose between cable and non-cable television reception.

(d) The Cable System shall be technically capable of transmitting Town-specific access programming and commercial programming, provided however, Issuing Authority acknowledges it has no rights nor ability to mandate specific programming.”

Our franchise license contains a "most-favored-nations" provision which states the following:

“Section 2.6 - NON-EXCLUSIVITY OF LICENSE

(a) This Renewal License shall not affect the right of the Issuing Authority to grant to any other Person a license or right to occupy or use the streets, or portions thereof, for the construction, upgrade, installation, operation or maintenance of a Cable Communications System within the Town of Wayland; or the right of the Issuing Authority to permit the use of the Public Ways and places of the Town for any purpose whatsoever. The Licensee hereby acknowledges the Issuing Authority's right to make such grants and permit such uses.

(b) To the extent allowed by applicable law(s), the grant of any additional cable television license(s) or Open Video System authorization shall be on substantially equivalent terms and conditions, when taken as a whole, as those contained in this Renewal License.

(1) In the event that the Licensee believes that any additional cable television licenses(s) have been granted on terms and conditions more favorable or less burdensome than those contained in this Renewal License, the Licensee may request, in writing, that the Issuing Authority convene a public hearing on that issue. Along with said written request, the Licensee shall provide the Issuing Authority with written reasons for its belief. At the public hearing, the Issuing Authority shall afford the Licensee an opportunity to demonstrate that any such additional cable license(s) are on terms more favorable or less burdensome than those contained in this Renewal License.

The Licensee shall provide the Issuing Authority with financial or other relevant information as is requested.

(2) Should the Licensee demonstrate that any such additional cable television license(s) have been granted on terms and conditions more favorable or less burdensome than those contained in this Renewal License, the Issuing Authority shall consider and negotiate, in good faith, equitable amendments to this Renewal License.

(3) The Licensee shall not request, or receive, amendments in connection with any services, facilities, funding and/or fee requirements in this Renewal License that have been satisfied as of the date of the public hearing in Section 23(b)(i) above.

(c) The issuance of additional license(s) shall be subject to all applicable federal law(s), and state laws, including G.L.c 166A and applicable regulations promulgated thereunder.

(d) In the event that the Licensee reports to the Issuing Authority that it is at a competitive disadvantage with material economic injury as a result of a competing comparable multichannel video programmer operating in the Town that is not required to be licensed by the Town, or is not an Open Video System subject to paragraph (b) above, the Issuing Authority and the Licensee agree that Section 625 of the Cable Act will be applicable such that commercial impracticability proceedings and rights will be available. Among other factors, the Issuing Authority will consider the nature and extent of any such competitive disadvantage and material economic injury in assessing a Section 625, commercial impracticability modification, request from the Licensee. The Licensee shall have the right to obtain modification of requirements of this Renewal License if the Licensee demonstrates and the Issuing Authority finds that it is commercially impracticable for the Licensee to comply with such requirement without modification and the proposal by the Licensee for modification of such requirement is appropriate because of commercial impracticability. Any final decision made by the Issuing Authority under this section shall be made in a public proceeding. Such decision shall be made within one hundred twenty (120) days after receipt of such request by the Issuing Authority, unless otherwise extended by agreement of the parties. The parties agree that the standard applied to the Licensee's request for modification shall be guided by the "Commercial Impracticability" provisions of the UCC - recognizing, and accounting for, distinctions given the context in which it is applied under Section 625 and that regarding the sale of goods which is governed by the UCC and by other commercial impracticability standards and that the Licensee shall provide the Issuing Authority with such information as needed to process and review the foregoing requests of the Licensee. In recognition of the foregoing being at the request of the Licensee, Licensee shall reimburse the Town's reasonable itemized costs in connection with such proceedings, not to exceed two thousand five hundred dollars."

Our franchise contains the following insurance and bonding requirements:

“Section 7.2 - INDEMNIFICATION

(a) The Licensee shall indemnify and hold the Town and its agents harmless at all times during the term of this License from any and all claims alleged to be caused by Licensee's construction, installation, operation, or maintenance of any structure, equipment, wire or cable to be installed pursuant to the License or exercise of any of its rights under this License. Upon receipt of notice in writing from the Town, the Licensee shall at its own expense defend any such actions or proceedings. Indemnified expenses shall include without limitation, all out-of-pocket expenses, such as attorney's fees.

(b) In order for the Town to assert its rights to be indemnified, defended, or held harmless, the Town must:

(1) promptly notify Licensee of any claim or legal proceeding which gives rise to such right;

(2) the Town shall afford the Licensee the opportunity to participate in and fully control any compromise, settlement or other resolution or disposition of such claim or proceeding, unless, however, the Town, in its sole discretion, determines that its interests cannot be represented in good faith by the Licensee and further acceptance of any non-monetary settlement or term involving injunctive relief or orders affecting the Town shall be subject to Town's consent; and

(3) the Town shall fully cooperate with the reasonable requests of the Licensee in its participation in, and control, compromise, settlement or resolution or other disposition of such claim or proceeding subject to subparagraph (2) above.

Section 7.3 - INSURANCE

(a) The Licensee shall carry insurance throughout the term of this Renewal License and any removal period pursuant to G.L.c. 166A, Section 5(f) with the Town as a named insured with an insurance company authorized to conduct business in Massachusetts satisfactory to the Issuing Authority indemnifying the Town and the Licensee from and against any and all claims for injury or damage to persons or property, both real and personal, caused by the construction, installation, operation, maintenance or removal of its Cable System or cable-related activity. The amount of such insurance against liability for damage to property shall be no less than One Million Dollars (\$1,000,000) as to any one occurrence. The amount of such insurance for liability for injury or death to any person shall be no less than One Million Dollars (\$1,000,000). The amount of such insurance for excess liability shall be Five Million Dollars (\$5,000,000) in umbrella form. Policy will contain a provision that the Issuing Authority will receive thirty (30) days' written notice prior to any cancellation.

(b) The Licensee shall carry insurance against all claims arising out of the operation of motor vehicles and general tort or contract liability in the amount of One Million Dollars (\$1,000,000). Policy will contain a provision that the Issuing Authority will receive thirty (30) days' written notice prior to any cancellation.

(c) All insurance coverage, including Workers' Compensation, shall be maintained throughout the period of this Renewal License. All expenses incurred for said insurance shall be at the sole expense of the Licensee. Policy will contain a provision that the Issuing Authority will receive thirty (30) days' written notice prior to any cancellation.

(d) The Licensee shall provide Issuing Authority with certificate(s) of insurance for all policies required herein on an annual basis.

Section 7.4 - PERFORMANCE BOND

(a) The Licensee shall maintain at its own expense throughout the term of this License a faithful performance bond running to the Town, with at least one good and sufficient surety licensed to do business in the Commonwealth of Massachusetts and reasonable approval by the Town in the sum of One Hundred Thousand Dollars (\$100,000). When the Cable System upgrade is complete, the amount of the bond shall be reduced to the sum of Twenty-five Thousand Dollars (\$25,000). Said bond shall be conditioned that the Licensee shall well and truly observe, fulfill and perform each material term and condition of this License and that in case of any failure to comply with any term and/or condition contained herein, the amount thereof shall be recoverable from said performance bond by the Town for all amounts resulting from the failure of Licensee to comply with any provision in this License.

(b) The performance bond shall be effective throughout the term of this License including the time for removal of facilities provided for herein, and shall be conditioned that in the event that Licensee shall fail to comply with any one or more provisions of this License, or to comply with any order, permit or direction of any department, agency, commission, board, division or office of the Town having jurisdiction over its acts, or to pay any claims, liens or taxes due the Town which arise by reason of the construction, upgrade, maintenance, operation or removal of the Cable Communications System, the Town shall recover from the surety of such bond all damages up to the limits insured by such bond, suffered by the Town as a result thereof, within thirty (30) days after a written request for same. Said condition shall be a continuing obligation of this License, and thereafter until Licensee has liquidated all of its obligations to the Town that may have arisen from the grant of this License or from the exercise of any privilege therein granted. Neither this Section, any bond accepted pursuant thereto, or any damages recovered thereunder shall limit the liability of Licensee under this License."

The cable franchise grants the cable operator access to the public rights of way and compatible easements for the purpose of providing cable television service. Apart from the franchise, the cable provider may be required to obtain a permit from the appropriate municipal office as well before it may access the public rights of way.

"Section 3.6 - TREE TRIMMING

In the installation, maintenance, operation and repair of the poles, cables, wires and all appliances or equipment of the Cable System, the Licensee shall avoid unnecessary damage to trees whether on public or private property in the Town and shall cut or otherwise prune such trees only to the least extent necessary. No cutting of trees on Town property shall occur except upon a permit in writing from the Town Tree Warden or other person designated by the Department of Public Works provided that such written permit is a requirement of general applicability and not specific to Licensee or cable television operators. Licensee shall make its best effort to secure the permission of the property owner prior to reasonable tree trimming.”

The franchise agreement provides for the following enforcement mechanisms by which we are able to ensure that the cable operator is abiding by its agreement:

“Section 3.16 - RIGHT OF INSPECTION

(a) In the event the Issuing Authority reasonably suspects non-compliance with Cable System construction and maintenance terms of this License, the Issuing Authority or its designee(s) shall have the right to inspect all construction, installation and/or upgrade work performed subject to the provisions of this License and to make such tests as it shall deem necessary to ensure compliance with the terms and conditions of this License and all other applicable law. Any such inspection shall be conducted at reasonable times upon reasonable notice to Licensee except that inspection of cable wires in plain view on a Public Way shall not require any such notice. Licensee shall have the right to be present at any such inspection. Any such inspection shall not interfere with the Licensee's operations.

(b) Any tests conducted by the Town shall be at the sole cost and expense of the Town and shall have the prior written approval of the Licensee. Unless otherwise mutually agreed upon, the Town shall give at least thirty (30) days prior notification to the Licensee of its intention to conduct any testing. “

“Section 7.19 - NON-EXCLUSIVITY OF REMEDY

No decision by the Issuing Authority or the Town to invoke any remedy under this License or under any statute, law or ordinance shall preclude the availability of any other such remedy.

Section 7.20 - REVOCATION OF RENEWAL LICENSE

This License may be revoked by the Issuing Authority, to the extent permitted by law. Any such revocations of this License shall be ordered after a public hearing by the Issuing Authority subject to the appeals provisions of G.L.c. 166A, Section 4, or any other rights available to the Licensee.

SECTION 7.21 - NOTICE AND OPPORTUNITY TO CURE

Prior to instituting any action against the Licensee under either Section 7.4 (Performance Bond) or Section 7.20 (Revocation of License), the Issuing Authority

shall notify the Licensee in writing of specific failure and shall give the Licensee thirty (30) days, or such longer time as may be granted by the Issuing Authority in its reasonable discretion, in which to rectify such failure and shall not proceed further if the matter is resolved to the reasonable satisfaction of the Issuing Authority within the specified time period.”

The Franchising Process

Under the law, a cable franchise functions as a contract between the local government (operating as the local franchising authority) and the cable operator. Like other contracts, its terms are negotiated. Under the Federal Cable Act it is the statutory obligation of the local government to determine the community's cable-related needs and interests and to ensure that these are addressed in the franchising process – to the extent that is economically feasible. However derived (whether requested by the local government or offered by the cable operator), once the franchise is approved by both parties the provisions in the franchise agreement function as contractual obligations upon both parties.

Our current franchise provides that changes in law which affect the rights or responsibilities of either party under this franchise agreement will be treated as follows:

There are no provisions dealing with changes in law.

While a franchise is negotiated by the local government as a contract, the process provides the cable operator additional due process rights, and consequent additional obligations on the local government. For instance:

“SECTION 7.21 - NOTICE AND OPPORTUNITY TO CURE

Prior to instituting any action against the Licensee under either Section 7.4 (Performance Bond) or Section 7.20 (Revocation of License), the Issuing Authority shall notify the Licensee in writing of specific failure and shall give the Licensee thirty (30) days, or such longer time as may be granted by the Issuing Authority in its reasonable discretion, in which to rectify such failure and shall not proceed further if the matter is resolved to the reasonable satisfaction of the Issuing Authority within the specified time period.”

Competitive Cable Systems

Our community was approached by RCN prior to our ATT Broadband/Comcast renewal, but the provider chose not to enter into any formal discussions. In addition, Verizon recently approached the town about providing video service over fiber to the home. We have not begun formal discussions with Verizon with regard to a franchise license, but plan to do so this forthcoming year. Their fiber build-out is in progress.

Conclusions

The local cable franchising process functions well in Wayland. As the above information indicates, we are experienced at working with cable providers to both see that the needs of the local community are met and to ensure that the practical business needs of cable providers are taken into account.

Local cable franchising ensures that local cable operators are allowed access to the rights of way in a fair and evenhanded manner, that other users of the rights of way are not unduly inconvenienced, and that uses of the rights of way, including maintenance and upgrade of facilities, are undertaken in a manner which is in accordance with local requirements. Local cable franchising also ensures that our local community's specific needs are met and that local customers are protected. The funding we receive through our franchise license is essential to providing live video coverage of town events.

Local franchises thus provide a means for local government to appropriately oversee the operations of cable service providers in the public interest, and to ensure compliance with applicable laws. There is no need to create a new Federal bureaucracy in Washington to handle matters of specifically local interest.

Finally, local franchises allow each community, including ours, to have a voice in how local cable systems will be implemented and what features (such as PEG access, institutional networks or local emergency alerts, etc.) will be available to meet local needs. These factors are equally present for new entrants as for existing users.

The Town of Wayland therefore respectfully requests that the Commission **do nothing** to interfere with local government authority over franchising or to otherwise impair the operation of the local franchising process as set forth under existing Federal law with regard to either existing cable service providers or new entrants.

Respectfully submitted,
Town of Wayland

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